

1 **So Ordered.**



2 *Frank L. Kurtz*  
3 Frank L. Kurtz  
4 Bankruptcy Judge

5 **Dated: June 13th, 2013**

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7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **EASTERN DISTRICT OF WASHINGTON**

10 In Re. . .

11 **SWANK AND McPOLAND, LLC,**

12  
13 Debtor.

No. **11-01412-FLK11**  
Chapter **11**

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER GRANTING  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND  
ABANDONMENT**

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18 THIS MATTER having come before the above captioned Court upon the Motion of  
19 Charles Robert Payne and Kay Marie Payne (collectively "Payne") (the "Motion"), a  
20 secured creditor herein, by and through its counsel Davidson Backman Medeiros PLLC, to  
21 grant relief from stay and abandonment as to the real property described as follows, and  
22 improvements thereon:  
23

24 Lots #1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12 and 13 of Block 1 of  
25 LANCELOT SHORES ADDITION TO CAMELOT SHORES,

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Findings of Fact, Conclusions of Law and Order Granting Motion  
for Relief from Stay

Payne\Pleadings.sa

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1 according to the recorded plat thereof, recorded in Book 4 of Plats,  
2 page 12, records of Pend Oreille County, Washington (hereinafter  
3 referred to as the "Property").

4 The Court having reviewed the records and files herein and having found that good cause  
5 exists for the relief requested in Payne's Motion, hereby enters the following Findings of  
6 Fact and Conclusions of Law:

7  
8 **FINDINGS OF FACT**

9 1. The Payne's have a claim against the Debtor in the amount of \$749,191.75  
10 that is secured by the Property (the "Payne Claim") pursuant to the rulings of the Honorable  
11 Allen C. Nielson in Pend Oreille County Superior Court Case Number 09-2-00130-4 as  
12 described in the Declaration Of Douglas D. Lambarth In Support Of Motion From  
13 Automatic Stay And Abandonment And Notice filed herein on May 10, 2013 [*Docket*  
14 *Number 260*] and the records and files herein.

15  
16 2. The Payne Claim is not adequately protected by the value of the Property and  
17 the Debtor has not offered other adequate protection.

18  
19 3. The Property is of inconsequential value and benefit to the Debtor's  
20 bankruptcy estate, is burdensome to the estate and is not necessary for the Debtor's  
21 reorganization based on the records and files herein and on Debtor's Third Amended Plan  
22 filed on March 19, 2013 [*Docket Number 224*] and Fifth Amended Disclosure Statement  
23 filed on March 19, 2013 [*Docket Number 223*] which indicate that the Debtor intends to  
24  
25

1 abandon the Property and that the Property “is burdensome to the Debtor and is otherwise of  
2 inconsequential value.”

3  
4 4. The Debtor filed a pleading entitled Declaration Of Donald Swank Re: Motion  
5 For Relief From Stay And Abandonment And Notice Thereof on May 28, 2013 [*Docket*  
6 *Number 269*] but did not object to the Motion. The only objection to the Motion was the  
7 Objection to Motion for Relief from Stay and Abandonment filed by Joanne McKnight filed  
8 on May 24, 2013 [*Docket Number 263*] (the “McKnight Objection”), which raised issues  
9 that are primarily based on Washington State law and is a dispute between two creditors  
10 asserting rights to property that is not necessary for an effective reorganization.  
11

12  
13 5. The Debtor does not have equity in the Property.

14 6. The issues raised in the McKnight Objection can and should be resolved by a  
15 Washington State court of competent jurisdiction. The authority of this Court to enter an  
16 order resolving the Washington State law issues raised by the McKnight Objection could be  
17 subject to challenge.  
18

### 19 **CONCLUSIONS OF LAW**

20  
21 1. The Payne Claim is not adequately protected. Payne is entitled to relief from  
22 stay under 11 U.S.C. Section 362(d)(1) for cause based on the findings that the Payne Claim  
23 is not adequately protected by the Property and that the Debtor has offered no other  
24 adequate protection.  
25

1           2.     Payne is entitled to relief from stay under 11 U.S.C. Section 362(d)(2) based  
2 on the findings that the Debtor does not have equity in the Property and that the Property is  
3 not necessary for an effective reorganization.  
4

5           3.     Pursuant to 11 U.S.C. Section 554, the Property should be abandoned from the  
6 bankruptcy estate because it is burdensome to the estate.  
7

8           4.     Pursuant to 11 U.S.C. Section 554, the Property should be abandoned from the  
9 bankruptcy estate because it is of inconsequential value and benefit to the estate.  
10

11           5.     The issues raised in the McKnight Objection are primarily based on  
12 Washington State law, which can and should be resolved by a Washington State court of  
13 competent jurisdiction. The authority of this Court to enter an order resolving the  
14 Washington State law issues raised by the McKnight Objection could be subject to  
15 challenge.  
16

17           WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law;

18           IT IS HEREBY ORDERED that pursuant to 11 U.S.C. Section 362(d)(1) and (2),  
19 Payne is entitled to and is granted relief from the automatic stay imposed under 11 U.S.C.  
20 Section 362, with respect to the Debtor and the Property in order to exercise all remedies  
21 allowed by its agreements with the Debtor, and by law, including, but not limited to entry of  
22 a judgment foreclosing their first position security interest in the Property, any and all other  
23  
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1 actions which may be determined to be necessary to foreclose their security interest in the  
2 Property, and to sell their collateral.

3  
4 IT IS FURTHER ORDERED that the Property is abandoned from the estate pursuant  
5 to 11 U.S.C. Section 554.

6 IT IS FURTHER ORDERED that the fourteen (14) day period for the stay of an  
7 order granting relief from the automatic stay, provided for in BR 4001(a)(3) is hereby  
8 waived, and this Order is effective upon entry.  
9

10 /// END OF ORDER ///

11 Presented by:

12 DAVIDSON BACKMAN MEDEIROS PLLC  
13

14 /s/ Bruce K. Medeiros  
15 Bruce K. Medeiros, WSBA No. 16380  
16 Attorney for Charles Robert Payne and Kay  
17 Marie Payne  
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